

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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| IN RE PHARMACEUTICAL INDUSTRY |) | |
| AVERAGE WHOLESALE PRICE |) | MDL NO. 1456 |
| LITIGATION |) | Civil Action No. 01-12257-PBS |
| |) | Subcategory No. 03-10643 |
| THIS DOCUMENT RELATES TO: |) | |
| |) | Judge Patti B. Saris |
| <i>The City of New York, et al.</i> |) | |
| |) | |
| v. |) | |
| <i>Abbott Laboratories, Inc., et al.</i> |) | |

**CORRECTED JULY 2009 STATUS REPORT ON BEHALF OF
THE CITY OF NEW YORK AND NEW YORK COUNTIES**

The undersigned counsel for the City of New York and New York Counties in the above-captioned action (hereinafter “plaintiffs”) hereby submit the attached Corrected Status Report for July 2009, in accordance with the Court’s June 17, 2004 Procedural Order.

Dated: July 2, 2009

Respectfully submitted,

**City of New York and New York Counties in
MDL 1456 except Nassau and Orange, by**

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**Corrected July 2009 Status Report on Behalf of the
City of New York and New York Counties**

FUL Summary Judgment Briefing

The parties' respective motions for partial summary judgment on FUL issues were fully briefed on June 30, 2009. Oral argument is set for July 8, 2009. Courtesy copies of all supporting materials have been delivered to the Court. Given the volume of materials submitted in connection with the parties' motions, plaintiffs will not again recite them here though plaintiffs stand ready to supply the Court with a complete list of such materials upon request.

GSK Motion for Partial Summary Judgment

On June 3, 2009, and pursuant to Court order, plaintiffs took the Rule 30(b)(6) deposition of GlaxoSmithKline on rebate issues.

On June 16, 2009, plaintiffs filed their supplemental memorandum in opposition to GSK's motion for partial summary judgment [Docket No. 6155; Sub-docket No. 105] and supplemental affidavit of Harris L. Devor [Docket No. 6153; Sub-docket No. 106].

GSK's supplemental reply was originally due June 30, 2009. On June 29, 2009, GSK requested a two-day extension, to which plaintiffs agreed. *See* Stipulation for Two-Day Extension of Time for GSK to Submit its Supplemental Brief in Support of its Motion for Partial Summary Judgment in the New York County Case [Docket No. 6203; Sub-docket No. 109].

Discovery

1. Defendants' Rule 30(b)(6) deposition of New York DOH

On June 29, 2009, plaintiffs, NYAG and NY DOH engaged in a meet and confer with defendants regarding the process by which NY DOH gathered and produced materials in response to defendants' subpoena. The parties also discussed possible stipulations that could be

made in lieu of producing certain documents requested.

2. Schering's Motion for a Protective Order

Plaintiffs will file their motion to lift the Schering Protective Order and expert affidavit after the Court rules on GSK's Motion for Partial Summary Judgment [Docket No. 5706].

Proposed Schering/Ven-a-Care Settlement

Plaintiffs are aware of the proposed Ven-a-Care/Schering settlement and have reviewed the materials submitted to the Court on June 26, 2009 in connection with the parties' Joint Motion for a Scheduling Conference [Docket No. 6173]. The proposed form of order contains proposed findings that (i) are contrary to the rulings of this Court; (ii) are premature given, *inter alia*, the absence of a ruling on the GSK motion for partial summary judgment in the New York Counties case, referenced above; (iii) include material misstatements of fact to which plaintiffs must object given their inaccuracy and also given that, if entered, defendant Schering would most certainly seek to use the inaccurate findings as a cudgel in plaintiffs' case and against plaintiffs' claims. Plaintiffs have conveyed their concerns preliminarily to counsel for Ven-a-Care, Schering and the United States Department of Justice. Plaintiffs will serve and file their objections to the language of the proposed order and any other relevant paper on or before July 10, 2009.

CERTIFICATE OF SERVICE

I, Kathryn Allen, hereby certify that on the 2nd day of July, 2009, I caused a true and correct copy of the above Corrected July 2009 Status Report for the City of New York and New York Counties to be delivered to counsel of record for defendants by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL No. 1456.

Dated: July 2, 2009

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